



TOWN OF BLACK MOUNTAIN

160 Midland Avenue ♦ Black Mountain ♦ N.C. ♦ 28711

Phone: (828) 419-9300 ♦ Fax: (828) 669-2030

MEMORANDUM

To: Town of Black Mountain Board of Adjustment
From: Jennifer Tipton, Senior Admin
Re: Agenda Packet for March 16, 2023
Date: March 10, 2023

The **Town of Black Mountain Board of Adjustment** will meet on **Thursday, March 16, 2023, at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

Please find the following items for your information and use at the meeting:

1. The proposed agenda;
2. Draft minutes from February 16, 2023; and
3. Order for Variance Request for 705-001 Holly Avenue.

Please let Jennifer Tipton know if you are **unable** to attend this meeting. jennifer.tipton@tobm.org or (828) 419-9371.

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9371 or by email at jennifer.tipton@tobm.org.

CC: Jessica Trotman, Planning Director
Russell Cate, Planner I/Zoning Administrator
Ron Sneed, Town Attorney



PUBLIC NOTICE
AVISO PÚBLICO

BLACK MOUNTAIN BOARD OF ADJUSTMENT

REGULAR MEETING
REUNIÓN ORDINARIA

Thursday, March 16, 2023, at 6:00 p.m.
Jueves 16 de marzo de 2023, a las 6:00 p.m.

The Black Mountain Board of Adjustment will meet for their monthly meeting on **Thursday, March 16, 2023, at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C.

La Junta de Ajuste de Black Mountain se reunirá para su reunión mensual **el jueves 16 de marzo de 2023 a las 6:00 p.m.** en Town Hall, 160 Midland Avenue, Black Mountain, N.C.

The meeting is open to the public.
La reunión está abierta al público.

Jennifer Tipton
Senior Admin

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La ciudad de Black Mountain se compromete a proporcionar instalaciones, programas y servicios accesibles para todas las personas en cumplimiento con la Ley de Estadounidenses con Discapacidades (ADA). Si necesita ayuda o un alojamiento en particular para esta reunión, comuníquese con Jennifer Tipton al (828) 419-9371 o por correo electrónico a Jennifer.tipton@tobm.org.

Posted to the Town Bulletin Board 03/01/2023
www.townofblackmountain.org



**Board of Adjustment Regular Meeting
March 16, 2023**

PROPOSED AGENDA

I. CALL TO ORDER

- **Welcome**
- **Determination of Quorum**

II. ADOPTION OF AGENDA

- **Motion:** To adopt the agenda as presented [or as amended]

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of February 16, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Approval of Order for Variance Request for 705-001 Holly Avenue

VI. COMMUNICATION FROM ZONING BOARD OF ADJUSTMENT

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, February 16, 2023, at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Lauren Dodgin, Chair
Larry Pearlman, Vice Chair
Ben Cooper
Andy Homrich

Absent:

Chloe Riddle

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator
Ron Sneed, Town Attorney

The meeting was called to order at 6:04 p.m. and duly constituted and opened for business with a quorum of four (4) regular members.

II. ADOPTION OF AGENDA

Larry Pearlman made a motion to adopt the agenda as presented. The motion was approved by consensus.

III. ADOPTION OF MINUTES

Larry Pearl made a motion to adopt the minutes of December 15, 2022, as written. The motion was approved by consensus.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

Variance Request – 705-001 Holly Avenue

Ben Cooper and Andy Homrich both stated that they had received a notice of the variance hearing because they own property within the two hundred feet buffer area. Both stated that they did not have any pre-formed decisions or opinions about the variance request and the board felt that they could continue.

Jennifer Tipton swore in all persons wishing to testify and speak.

Russell Cate stated that the lot at 705-001 Holly Avenue is currently a vacant lot zoned UR-8 and the applicant is seeking a variance to allow an accessory structure to be placed in the front yard in front of the primary structure. The lot is .15 acres with an average slope of 17.04% and the setbacks are twenty feet in the front, ten feet on the sides, and fifteen feet in the rear. The site plan submitted with the application shows both the primary structure and the accessory structure

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to be in conformance with the setback requirements. The proposed accessory structure is a 192 square foot studio.

Steve Ferrell, 103 Ninth Street, is a licensed architect but will be constructing his personal residence on this property. Mr. Ferrell referenced Section 4.5.4 (a) which prohibits accessory structures in the front yard and he is seeking relief from that section due to size and topography of the property. The property is 6,500 square feet and 2,850 square feet of that lot is buildable due to the setback requirements. Approximately 56% of the lot is unbuildable. The average lot usually is only 10% to 25% unbuildable. Mr. Ferrell feels that he suffers unduly by having the same setbacks. He does not want a big house on a big lot and the primary structure will be approximately 1,000 square feet. The studio would be used for his architectural business and the work would be online and by phone, so no customers would be coming to the studio. There is a delta of approximately 20% slope from the street to the back corner so it would make building a two-story structure difficult. Mr. Ferrell said that the front yard would pull double-duty by also acting as a backyard and would have a courtyard concept. Mr. Ferrell said he could put the studio area into the primary structure but that would make the primary structure larger and taller and the houses on both sides of the lot read as single-story buildings. Staff clarified that the variance request is for the studio building only. The board asked Mr. Ferrell about reversing the structures and Mr. Ferrell stated that if he did that, he would not get his garden area and the lighting is not as good in the back lower area of the lot. Mr. Ferrell stated that this is a tricky lot and this is a solution that he thinks will work and work well. The accessory structure would still have to be twenty feet from the setback in the front and would be in-line with the other structures on the street.

Vickie Osteen, 11918 Berry Hills Road, asked about where the vehicles would be parked and Mr. Ferrell noted that they did have a parking area that would accommodate the parking requirements. The parking area will not be covered.

Kent Patton, 708 Holly Avenue, said he is impressed with the proposed drawings and appreciates Mr. Ferrell's goal to preserve the neighborhood. Mr. Patton said that he knows what eyesores accessory structures can be and worries about a precedent being set if this variance is allowed. Mr. Patton said he feels that the ordinance should be upheld, and the variance denied.

Kiersten Hall, 100 Portmanvilla Road, also expressed concerns about setting a precedent and said to keep the ordinance as it stands.

Mr. Ferrell said that he appreciated the comments but that he could, by right, connect the studio to the building but did not really want to go that route. Mr. Ferrell said that he understands the issue about accessory structures, like the pre-fabricated ones from Home Depot, and that they do not belong in the front yard, but his proposal is architecturally integrated and there are also two large oak trees in the rear yard that he would like to preserve.

Town Attorney Ron Sneed reminded everyone that variances do not set precedent as each one is an individual case and has to be considered based on the application and evidence presented.

The lot was subdivided from one larger parcel into three smaller parcels. Mr. Ferrell said that the former owner ran into the same issues and just decided to sell the lot. Mr. Ferrell said that he feels the structures would be an asset to the community and the front yard would also be landscaped.

Allen Arcand, 304 Ninth Street, asked if the door would face the street. Mr. Ferrell stated that the door would face the side and there will be a window facing the road. The studio will be connected by a porch only and the porch will have an opaque roof with a photovoltaic array.

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Marguerite Crawford, 1001 NC 9 Hwy, asked how much of a variance the applicant is requesting. Staff explained that the variance is for the studio to be placed in the front yard. Mr. Ferrell said that the parking area will be thirty-one feet from the property line so there will be room to stack parking.

Jennifer Tipton summarized the evidence as follows:

- Exhibit 1: Staff Report
- Exhibit 2: Variance Application
- Exhibit 3: Buffer Map
- Exhibit 4: List of Property Owners within 200'
- Exhibit 5: Notice of Variance Request
- Exhibit 6: Aerial Map
- Exhibit 7: Section 4.5.4 of the Land Use Code

Andy Homrich made a motion to go into to recess. The motion was approved by consensus.

The board discussed that there were several ways that the applicant could make the project work without a variance, such as attaching the structures and a variance would not be needed unless they wanted to be closer to the street. The building would still be offset and closer to fitting into the neighborhood. The board appreciated the applicant's awareness of the trees and solar panels. The board expressed concerns that if the house were to be sold, what another owner might do with the front accessory structure.

Andy Homrich made a motion to come out of recess. The motion was approved by consensus.

Ben Cooper made a motion to close the evidentiary hearing. The motion was approved by consensus.

The board found the following:

1. The proposed variance does not result from an unnecessary hardship resulting from the strict application of the law because the site plan dictated a preference of the applicant and the characteristics of the lot.

The variance fell short of the necessary 4/5ths vote so the variance request is denied.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

With no further business, the meeting was adjourned at 6:59 p.m.

Prepared by: _____

Board of Adjustment Regular Meeting

Lauren Dodgin, Chair

Jennifer Tipton, Senior Admin

Board of Adjustment Regular Meeting

In the Matter of the Application of)
Stephens (Steven) Smith Farrell for a)
Variance for Property on Holly Avenue)
Lot 2, Plat Book 203, Page 35)
_____)

FINDINGS OF FACT AND ORDER

THIS CAUSE, coming on before the Zoning Board of Adjustment for the Town of Black Mountain on February 16, 2023, upon the application of Stephens (Steven) Farrell for a variance to allow construction of an accessory structure in the front yard of his lot on Holly Avenue.

Steven Farrell appeared to present the applicant’s case.

Russell Cate, Planner, and Jennifer Tipton, Zoning Administrator, appeared for the Town staff and Ronald E. Sneed attended as counsel to the board.

The Zoning Board of Adjustment, having heard and considered the testimony of town staff and all witnesses, and having considered all the evidence presented by the town staff and the Applicant and the statements and arguments for the Applicant, makes the following

FINDINGS OF FACT

1. The Zoning Board of Adjustment has jurisdiction over this matter pursuant to Section 1.7.3 of the Land Use Code.
2. Proper notice of this meeting and hearing of the Zoning Board of Adjustment was provided as required by the Town ordinances and the state law.
3. Applicant and Dana L. Wingate are the owners of the unaddressed property located on Holly Avenue, Black Mountain, North Carolina, designated as 705-001 Holly Avenue for purposes of this hearing, which has the current PIN number of 0619-19-6066-00000 as shown on the Buncombe County tax maps, being all of Lot 2 as shown on that plat recorded in Plat Book 203 at Page 35, Buncombe County Registry.
4. The property is zoned UR-8.
5. That the said Lot 2 is 50.19 feet wide and 130 feet deep, with the back of the lot being

steeper than the front portion, with two large oaks on the back portion of the lot.

6. That there is no structure on the lot at this time.

7. That the lot is narrow, making it impractical or impossible to construct an accessory structure beside the principal structure.

8. That the Applicant proposes construction of a residence toward the rear of the lot with an accessory structure built on the front of the lot, which Applicant plans to use as an office or work space for his work as an architect.

9. That Applicant can build the residence on the front of the lot and place an accessory structure behind the house, or redesign the home to make the office space a part of the principal structure instead of creating a separate accessory structure, but he testified that it is his preference to place the accessory structure in front for personal and aesthetic reasons.

10. To be granted a variance, the Applicant is required to prove all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

11. That the lot owned by the Applicant is narrow, but the site plan proposed by the Applicant for which he will need a variance allowing the accessory structure to be placed in front of the house is the preference of the Applicant but not a site plan dictated by the characteristics of the lot, so there is no unnecessary hardship resulting from conditions that are peculiar to the property.

12. That to grant a variance, this board must find all the above described facts and approve the requested variance with 4/5ths of the full board membership.

13. That the vote on the proposed finding that an unnecessary hardship will result from strict application of the ordinance was two to two, falling short of the necessary 4/5ths vote to

make this finding.

BASED UPON THE FOREGOING FINDINGS OF FACT, THIS BOARD concludes that no unnecessary hardship will result from the strict application of the ordinance and that the Applicant is not entitled to a variance to allow placement of an accessory structure in front of the principal structure.

IT IS NOW, THEREFORE, ORDERED, that the Applicant's request for a variance is denied.

This the _____ day of _____, 2023.

LAURIN DODGIN, Chairperson

If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Buncombe County within 30 days after the date this order is served on you. See Section 1.7.5 of the Land Use Code., Appeals from Decisions of the Zoning Board of Adjustment, in the Town of Black Mountain Code of Ordinances.